(1) (5)

Division Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR: C.G.

M.A. No. 1466 Of 2005

MISCELLANEOUS APPEAL UNDER SECTION 173, MOTOR VEHICLES ACT, 1988

Appellants
(Non applicants 3) : 1) United India Insurance Co.Ltd.,
Krishna Complex, Katchury Chouk
Raipur(C. G.)

Vs

Respondents: 1) Jumman S/o Gul Khan aged 32years (Driver),
R/oVillage Devri, Post Office Pahanda,
Tahsil & Thana Berla,
District Durg(C.G.) (**Non-applicant 1)**

2) Gul Khan S/o Bisarat Khan, aged 70 years,
R/o Village Devri Post Office Pahanda,
Tahsil & Thana Berla,
District Durg (C.G.)

(Non-applicant 2)

3) Janak S/o Manglu Dhruv, aged 40 years,
4) Dhan Bai W/o Janak aged 35 years

Both R/o Village Anandgaon Tahsil & Thana Berla
DistrictDurg(C.G.) **(Applidants/Claimants)**

P.R.No. 3218/05
Presented by Shri Sanjay Sharma
dated 30/12/05

Claim in appeal for setting aside/modified the award,
valued at Rs.1,62,000/-

Court Fee affixed at Rs.15/-
(Note: 'Receipt' regarding deposition of Rs.25,000/- is being filed herewith)

Being aggrieved by award dated 30.8.2005, passed by Upper Motor Accident Claims Tribunal, Bemetara , Durg in Claim Case No.16/2005, the appellant prefers this appeal on the following facts and grounds:-

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(16)

आदेश पत्रक

मामला क्रमांक M.A.No. 1466/05 सन् 200

विरुद्ध

आदेश क्रा दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : HON'BLE SHRI LAL CHAND BHADOO, J. AND HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J.

22-12-2005

Mr. Sanjay S. Agrawal, counsel for the appellant.

Heard on admission.

ORAL ORDER

1. By this appeal, the appellant/Insurance Company has questioned the legality, propriety and correctness of the award dated 30-8-2005 passed by Motor Accidents Claims Tribunal, Bemetara, Durg in Claim Case No.16/05, whereby learned Tribunal, while allowing the claim petition of respondents No.3 and 4 herein, passed an award of Rs 1,62,000/- in their favour.

2. The brief facts leading to filing of this appeal are that, respondent No.2-herein was the registered owner of Tractor bearing No.CG 07 D 2596 and attached Trolley bearing No.CG 07 D 2597.

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आदेश पत्रक

मामला क्रमांक —2— सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The said Tractor and Trolley were insured by the appellant herein on 24-1-2004 and that insurance was valid upto 23-1-2005. On 12-1-2005, respondent No.1, Jumman was driving the said Tractor and Trolley. On that day, respondent No.1, Jumman, while driving the Tractor in a rash and negligent manner, caused the accident, whereby Ramcharan, who was sitting in the Trolley at the relevant time fell down and he was crushed under the Tyre of the Tractor, as a result of which, he died spontaneously. The matter was reported to Police Station, Berla, where Crime No.6/05 was registered under Section 304 A of the Indian Penal Code. A claim petition was filed before the Tribunal for awarding compensation to the tune of Rs.15,25,000/-. However, learned Tribunal passed the award of Rs.1,62,000/-. This award has been questioned by the appellant/Insurance Company on the ground that, at the relevant time, Ramcharan was sitting on the Mudguard of the Tractor beyond the sitting capacity of the Tractor, therefore, the Insurance Company cannot be held liable, and further that, without framing an issue that the Tractor in question was being used for other than

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आदेश पत्रक

मामला क्रमांक —3— सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the agricultural purpose, the Tribunal has passed the award. The other ground, challenging the award in question, has been taken that, instead of considering the age of the parents of the deceased, multiplier of 16 has wrongly been applied considering the age of the deceased. As far as the second ground regarding the wrong application of multiplier of 16 is concerned, since it is an appeal of the Insurance Company and admittedly no permission was obtained by the Insurance Company from the Tribunal under Section 170 of the Motor Vehicles Act, 1988 to contest the claim on that ground, therefore, the Insurance Company is not entitled to raise this ground in this appeal. As far as the other ground that, issue was not framed to the effect that the Tractor was being used for other than the agricultural purpose and at the time of the accident, Ramcharan was sitting on the Mudguard of the Tractor beyond the sitting capacity of the Tractor, it is true that, such issue was not framed, but from perusal of para 13 of the award, it appears that, the evidence on this aspect was adduced by the parties and the Insurance Company was aware about the said

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आदेश पत्रक

मामला क्रमांक ....-4-.... सन् 200

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	defence taken by the Company and no objection was raised before the Tribunal for framing the issue on that and as the Insurance Company contested the claim petition, having knowledge about the said defence and full opportunity was granted to the appellant/Insurance Company, therefore, no serious prejudice has been caused to the Insurance Company on account of non-framing of the issue on the point. Therefore, the Insurance Company cannot be allowed to raise this ground for the first time that the issue was not framed. As far as the question that the deceased Ramcharan was sitting on the Mudguard of the Tractor beyond the sitting capacity of the Tractor is concerned, learned Tribunal, considering the evidence adduced by the claimants and the eye-witness i.e. Witness No.2, Narayan, has recorded a finding in para 13 of the award that, Ramcharan was sitting in the Trolley not on the Mudguard of the Tractor and the same fact was mentioned in the Merg Intimation and F.I.R. and Ramcharan fell down from the Trolley on account of jumping of the Trolley. Therefore, there is no substance in this argument. As far as the question that the	

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आदेश पत्रक

मामला क्रमांक —5— सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Tractor in question was being used for other than agricultural purpose is concerned, learned Tribunal has recorded a finding in para 13 of the award that at the relevant time the Tractor was going to the River for bringing sand which was to be used in the agricultural field and, therefore, the Tractor was engaged in the agricultural purpose. This finding of learned Tribunal is based on the evidence of Witness No.1, Jumman, the Driver of the Tractor and no contrary evidence was adduced by the Insurance Company.

3. Therefore, for the foregoing discussion, we are of the opinion that, the appellant/Insurance Company has not been able to raise a ground which requires consideration of this appeal and the appeal is devoid of merit. In the result, the appeal is liable to be dismissed and is dismissed at the admission stage itself.

Sd/-
L.C.BHADOO
Judge

Sd//-
V.K.Shrivastava
Judge

G.Singh

24/12/08

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